King Radio Corporation *and* Truck Drivers and Helpers Local 696, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and Communications Workers of America, Party to the Contract. Case 17-CA-9694

August 3, 1981

DECISION AND ORDER

On April 13, 1981, Administrative Law Judge Burton Litvack issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, King Radio Corporation, Olathe, Kansas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT recognize or bargain with Communications Workers of America as the exclusive representative for purposes of collective bargaining of the production and maintenance employees, including plant clerical employees, at our Lawrence, Kansas, plant unless said labor organization has been duly certified by the National Labor Relations Board to represent such employees.

WE WILL NOT enforce or give effect to our May 9, 1980, contract extension agreement with Communications Workers of America; provided that WE WILL NOT revoke any wage increases or other benefits put into effect as the result of said agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

KING RADIO CORPORATION

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge: This matter was heard before me in Kansas City, Kansas, on August 6 and 7, 1980, based upon a complaint and notice of hearing which was issued by the Regional Director for Region 17 of the National Labor Relations Board, herein called the Board, on July 2, 1980, and which, in turn, was based upon a charge filed by Truck Drivers and Helpers Local Union No. 696, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called the Teamsters, on May 23, 1980. The complaint alleges that King Radio Corporation, herein called Respondent, violated Section 8(a)(1) and (2) of the National Labor Relations Act, herein called the Act, by granting recognition to, and entering into a collective-bargaining agreement with, Communications Workers of America, herein called CWA, as the exclusive representative for purposes of collective bargaining of certain of its employees at a plant located in Lawrence, Kansas, at a time when CWA did not represent an uncoerced majority of said employees and at a time when the Teamsters was actively engaged in an organizing campaign among said employees, and Section 8(a)(1) of the Act by interrogating employees as to their union or other protected concerted activities and creating the impression of surveillance of its employees' union activities. Respondent filed an answer denying the commission of any unfair labor practices. All parties were given full opportunity to participate, to offer relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs, which all parties chose to do. Accordingly, upon the entire record[1] herein, consideration of the post-hearing briefs, and my observation of the demeanor of the witnesses, I make the following:

[1] In her post-hearing brief, counsel for the General Counsel included a motion to correct certain "typographical errors" in the transcript herein. Inasmuch as Respondent does not oppose this motion, and having examined the transcript, I shall grant her motion.

FINDINGS OF FACT

I. JURISDICTION

Respondent, a State of Kansas corporation, is engaged in the manufacture of aircraft radios and related navigational systems various facilities within the State of Kansas, including a facility located in Lawrence, Kansas. In the normal course and conduct of said business operations, Respondent annually purchases and receives goods and products valued in excess of $50,000 directly from suppliers located outside the State of Kansas and annually sells and ships goods and products valued in excess of $50,000 directly to customers located outside Kansas. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATIONS

Respondent admits, and I find, that the Teamsters and CWA are now, and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

III. ISSUES

1. Whether, on or about May 9, 1980, Respondent violated Section 8(a)(1) and (2) of the Act by granting recognition to, and entering into a collective-bargaining agreement with, CWA as the representative of certain of its employees at its Lawrence, Kansas, plant at a time when CWA did not represent an uncoerced majority of said employees and at a time when a question concerning representation existed with the Teamsters.
2. Whether Respondent's aforementioned Lawrence, Kansas, employees constitute an accretion to a unit of Respondent's Olathe, Kansas, employees represented by CWA.
3. Whether Respondent violated Section 8(a)(1) of the Act by interrogating its employees regarding their union activities and by creating the impression of surveillance of said activities.

IV. FINDINGS OF FACT

A. *Facts*

1. Recognition of CWA

Respondent is engaged in the manufacture of aircraft radios and related navigational equipment at five plants within the State of Kansas; two plants in Olathe, herein called the Olathe (Rogers Road) and Olathe (Brockway) plants and facilities in Lawrence, Ottawa, and Paola. In 1966 CWA was certified by the Board as the exclusive representative for purposes of collective bargaining of all production and maintenance employees, including plant clerical employees, employed by Respondent at its Olathe (Brockway) and Olathe (Rogers Road) plants; excluding office clerical employees, accounting department employees, professional employees, guards and supervisors as defined by the Act.[2] In 1973 Respondent commenced production at its Lawrence and Ottawa facilities. After extensive litigation concerning its obligation to bargain collectively with CWA, in November 1975 Respondent and CWA entered into an initial collective-bargaining agreement, effective until November 21, 1976, with Respondent granting recognition to CWA as the bargaining representative of employees in the certified unit but expressly limiting such recognition to the two Olathe plants. The record establishes that during negotiations for this contract CWA representatives demanded that its coverage be extended to the Lawrence and Ottawa production and maintenance employees, that Respondent refused to accede to this position, and that CWA ultimately acquiesced presumably in order to consummate negotiations.[3] The record further establishes that during negotiations for the parties' next agreement, effective from November 21, 1976, until November 21, 1979, CWA officials renewed its demand that recognition be extended to Lawrence and Paola, but Respondent again refused. Likewise, during discussions in 1979 leading to the current collective-bargaining agreement, effective until November 21, 1982, CWA negotiators once again demanded recognition at the three other plants,[4] but, as previously, Respondent refused, and CWA acquiesced thereto.[5] Richard Johnson, the director of personnel for Respondent, testified that Respondent's position in extending contract coverage of the employees of Lawrence, Ottawa, and Paola remained consistent during the aforementioned negotiations—while Respondent believed that employees at these other plants could properly be accreted to the existing Olathe bargaining unit, Respondent would not voluntarily do so unless either majority support for CWA was manifested at these facilities or until the Board ruled that the other plants constituted accretions to the Olathe bargaining unit.[6]

Notwithstanding its above-described contractual demands, there is no evidence in the record that CWA has ever conducted organizational campaigns among the production and maintenance employees at Respondent's Lawrence, Ottawa, or Paola plants. Indeed, there is no evidence of any union activity at these facilities until April 1980.[7] The record reveals that on or about April 28 Ingrid Wooten, a board analyzer employee at Respondent's Lawrence plant, spoke to two other Law-

[2] The record establishes that only the two Olathe, Kansas, plants were in existence at that time.

[3] In a memorandum to all of Respondent's employees, dated November 20, 1975, Respondent set forth the contractual bargaining unit and stated, "In addition, Lawrence and Ottawa employees are not covered by the agreement."

[4] Respondent began manufacturing operations at its Paola, Kansas, plant in 1977.

[5] The recognition clauses in the 1976 and 1979 contracts are identical to that set forth in the 1975 agreement and expressly limit recognition of CWA's representational status to the Olathe plants.

[6] While refusing to recognize CWA as the bargaining representative for the Lawrence, Ottawa, and Paola production and maintenance employees, the record discloses that some, but not all, of the terms and conditions of employment embodied in the three collective-bargaining agreements with CWA were applied to these employees. Thus, while the economic provisions were made applicable by Respondent, Richard Johnson testified that Lawrence, Ottawa, and Paola employees could not utilize the contractual grievance and arbitration procedure. Based upon the foregoing, Respondent asserts that CWA was the *de facto* representative of employees at the three unrepresented plants.

[7] Hereinafter all dates are in 1980 unless otherwise stated.

rence employees, Rhonda Miller and Doris Detheridge, about organizing a union at the plant. Both employees were apparently receptive to the possibility, and, that night, Wooten telephoned the Teamsters office in Topeka, Kansas, and spoke to William Moore, a business representative. They spoke about union representation, and Moore told Wooten that the latter would have to form some sort of an in-plant employee committee before he would discuss the mechanics of organizing. Wooten spoke to several other employees the next day and telephoned Moore to report that a committee had been established; they arranged a meeting for May 6 at a Lawrence motel.

Employee Rhonda Miller testified that at 1:30 p.m. on May 6 Supervisor Dennis Kuester[8] approached her at her work station and said, ". . . you know you can trust me and I told him well, I guessed I could. He said I would like to know about the meeting tonight and I told him the time, the place and he wanted to know if he could attend. I told him I didn't see any reason why he couldn't. I would check with someone. . . ."[9] Thereupon, Miller left her work station and spoke to Wooten, who said that management was not allowed at a union meeting.[10] Miller then returned to her job, and Kuester once again approached her. After being told by the former that he could not attend, Kuester ". . . said that he appreciated me finding this out for him and he was a hundred percent behind us and he would appreciate any feedback, and I asked him what he meant by feedback and he said any information and I told him O.K. and we ended the conversation." Miller further testified that no specific union was mentioned by either Kuester or herself.

Dennis Kuester denied Miller's version of the conversation and testified that he was passing through Miller's work area, which is adjacent to his department, on May 6 when the latter beckoned to him and ". . . told me there was something that she wanted me to know and that there was a union meeting, just basically was expressing it as she thought I would be interested." Kuester asked if he could attend, and Miller said yes—she knew of no reason why Kuester could not attend. The conversation then ended, but a few moments later Miller came over to Kuester's desk and said that she had talked to someone else and that he would not be welcome. Kuester replied that if he would not be welcome he would not attend. Immediately after speaking to Miller, Kuester reported the conversation to George Lewis, the Lawrence plant manager.

The record further reveals that Lewis, in turn, telephoned Richard Johnson. According to the latter, Lewis ". . . said that he had received rumors that there would be a meeting at a motel or a hotel in Lawrence . . . in an attempt to organize the employees . . . in the Lawrence plant." While denying that he asked Lewis to substantiate those "rumors," Johnson did request the former to keep him informed as to future developments.

That night, as scheduled, a group of six Lawrence plant employees met with Moore and an unidentified Teamsters official at the Holiday Inn in Lawrence. Moore explained to the employees how an organizational campaign is conducted, concentrating upon the utilization of authorization cards. Moore, who brought approximately 200 such cards with him to the meeting, distributed them to each employee.[11] Four employees, including Wooten and Miller, signed cards right then. For her part, Wooten distributed cards at the plant beginning the next day and received one signed authorization card back that afternoon, another card the next day, and four or five signed cards on May 9. Moore testified that the Teamsters possessed at least 17 signed cards dated May 9 or earlier.[12]

Both Wooten and Miller testified that a supervisors' meeting was held on the morning of May 8 and that management officials from the Olathe (Rogers Road) plant were present. According to Miller, her immediate supervisor, Judy McCartney, told a group of workers, including Miller, that ". . . we now have a union. You can join or not join whichever you choose and I asked her a question at that time and she said that she was not at liberty to discuss it with me and she left. . . ." Miller further testified that pursuant to his request she telephoned Kuester at his home after work on May 9, telling him about another scheduled union meeting. Miller then said that she heard the employees already had a union and asked what Kuester knew. He replied that he was not at liberty to talk about it. Miller asked if it was the Teamsters, and Kuester repeated that he did not want to discuss it. Miller ended the conversation, stating that the union meeting was with the Teamsters.[13]

Miller and Wooten further testified that on May 13 they both observed two documents which were posted on a bulletin board in the employee lunchroom. The first was a "Notice" to all production and maintenance employees at the Lawrence plant from Richard Johnson. Said notice informed the employees that on May 9 Respondent and CWA had agreed to extend their existing collective-bargaining agreement to cover the Lawrence plant. The other document, addressed to the "Lawrence, Kansas Hourly Employees—King Radio Corporation" and signed by officials of CWA, informed the employees

[8] In its answer, Respondent admits that Kuester is its supervisor and agent within the meaning of Sec. 2(11) and (13) of the Act.

[9] During cross-examination, Miller reaffirmed the accuracy of her pretrial affidavit version of his conversation wherein she stated that Kuester began the conversation, saying that ". . . he was seeking information," and that he used the words "I am pro-union."

[10] Counsel for the General Counsel adduced the testimony of Wooten apparently in order to corroborate Miller; however, the former stated that she and Miller spoke in the *morning* with regard to supervisors attending the union meeting and that Miller reported Kuester asking "if he could come to the *Teamsters* meeting that night." (Emphasis supplied.)

[11] Miller was internally inconsistent and contradicted Wooten as to the number of authorization cards that she was given on May 6. Thus, on direct examination, Miller stated that she was given approximately 30 to 50 cards to distribute; however, she was directly impeached with her sworn pretrial affidavit wherein she stated that she received 20 cards from Moore. Meanwhile, Wooten testified that she was given 20 authorization cards by Moore and that each employee received a similar sized stack.

[12] Of these cards, 15 are dated prior to May 9.

[13] Kuester's version of this conversation is that Miller began by saying that she had just been to a Teamsters union meeting and asking what he thought. Kuester responded that he could not imagine what the Teamsters had to do with Respondent. Miller replied that it had been a Teamsters meeting, and the conversation ended.

that the existing contract had been extended to cover the Lawrence plant "based on accretion" and that "as soon as possible we will be calling a meeting to get acquainted. . . ." Prior to this date, there is no record evidence of any CWA organizing activity at the Lawrence plant.

Indeed, on May 9 Richard Johnson, on behalf of Respondent, and Paul Scales, on behalf of CWA, entered into a memorandum of agreement, extending the parties' November 21, 1979, collective-bargaining agreement to cover, as an accretion, Respondent's Lawrence facility. According to Johnson, based upon ". . . the rumors of organizing activities going on in Lawrence" and upon Respondent's belief that accretion had occurred . . ." he telephoned CWA representative Scales in St. Louis, Missouri, just prior to May 9 and asked the latter if CWA continued to maintain that it represented the employees at the Lawrence plant. Scales replied that such remained the position of CWA. Johnson said that Respondent had rumors of Teamsters organizing at that plant[14] and did not feel they were "appropriate" in view of the CWA position and would be willing to now extend recognition to CWA. Scales readily agreed and asked Johnson to prepare the necessary documents.

Johnson candidly admitted that recognition was extended to CWA as the collective-bargaining representative of the production and maintenance employees at Respondent's Lawrence plant at a time when CWA had not demanded such recognition, had not demonstrated majority support among said employees by virtue of signed authorization cards or other means, and, in fact, was not even attempting to organize at that facility. Notwithstanding its apparent magnanimity, the record plainly reveals that Respondent's precipitous conduct herein seems to have been at utter variance with its stated position during earlier collective bargaining with CWA—that, despite believing accretion existed, recognition would not be extended to CWA at Respondent's other facilities until majority support for CWA was established at these plants or until the Board ruled that accretion, in fact, existed. Asked to explain this inconsistency, Johnson explained that Respondent acted, as it had, because the Lawrence employees clearly were manifesting an interest in being represented by a union and ". . . it was my understanding in labor law that the CWA already represented them and, perhaps, the time would come when we could formalize it." Thus, extending recognition to CWA ". . . was just formalizing a fact that under law existed."

2. The factors relevant to the accretion issue

From the foregoing, if Director of Personnel Johnson is to be credited,[15] the basis for the recognition of CWA was Respondent's belief that the relationship between the Olathe plants and those facilities in Lawrence, Ottawa, and Paola was—and is—such that, at least, the Lawrence plant constitutes an accretion to the Olathe facilities. On this point, the record establishes that there are 688 employees at Olathe (Rogers Road), 184 at Olathe (Brockway), 296 at Lawrence, 321 at Paola, and 588 employees at Ottawa and that the distance between the two Olathe plants is 4 miles, the distance between Olathe and Ottawa is 33 miles, the distance between Olathe and Lawrence is 31 miles, the distance between Olathe and Paola is 22 miles, the distance between Lawrence and Ottawa is 27 miles, the distance between Lawrence and Paola is 33 miles, and the distance between Ottawa and Paola is 22 miles.

The record further establishes that Respondent's executive hierarchy all maintain offices at the Olathe (Rogers Road) plant; that Respondent is divided into various "divisions" (operations, engineering, product design, material control, customer service, etc.) with a corporate vice president, located at Olathe (Rogers Road), in charge of each; and that each vice president is responsible to Respondent's president. The vice president of operations is Robert Dunn, and each plant manager is directly responsible to him. Also, there exists significant centralization of administrative functions at the Olathe (Rogers Road) plant. Thus, all purchasing, except for items costing $50 or less, and production planning is done there. Further, all matters involving engineering, product design, marketing, customer service, advertising, and material control are managed by staffs located at Olathe (Rogers Road). In addition, Respondent's nurse, who is based at this facility, travels on a regular schedule to the other plants; the printing of corporatewide forms is done there; and an intraplant trucking service, whose employees are based at Rogers Road, performs regularly scheduled pickups and deliveries at each plant. Moreover, none of the individual plants operates as a separate profit center nor are there separate plant budgets, and all payroll funds are issued from a central bank account, with all checks printed and sent from Olathe (Rogers Road).

The record reveals that the highest ranking corporate official at each plant is the plant manager; that beneath this individual are various superintendents; and that the lowest level management personnel are the departmental supervisors. Each plant manager is directly responsible for assembly and testing work at his plant, with the superintendents in charge of said functions responsible to him. Illustrative of Respondent's centralization of administrative functions is the fact that, while there are normally several other superintendents assigned to each plant and they supervise such operations as quality assurance, production control, plant maintenance, and manufacturing services, all report directly to vice presidents who are based at the Olathe (Rogers Road) plant.

The record further reveals that Respondent's manufacturing process is, according to Johnson, "totally integrated" with products shipped between plants for fabrication, testing, finishing, and other functions before becoming finished and ready for shipping, the latter function performed by employees at Olathe (Rogers Road). Johnson did testify that, while some products may be totally built at one plant, what is normally the case is that particular plants fabricate and manufacture components for

[14] Johnson testified that after six or seven telephone conversations with Plant Manager Lewis and others ". . . it was determined that it was not the CWA, but that, in fact, it was the Teamsters."

[15] Johnson's testimony regarding the recognition of CWA at the Lawrence facility is uncontroverted. Moreover, inasmuch as motivation is not a relevant consideration, a credibility resolution is not necessary.

more complex, finished products. With regard to employee job functions, there are 56 bargaining unit job classifications at the Olathe (Rogers Road) plant; of these, employees of Lawrence occupy 15 said classifications, at Olathe (Brockway)—15, at Ottawa—18, and at Paola—20. Johnson further testified that between January 1979 and August 1980, there were approximately 3,300 temporary transfers (1 day or less) between plants for training, instruction, maintenance, and other matters and that such transfers are an ongoing program.[16] As to permanent transfers during this same time period, there were a total of 61 employee transfers involving all plants, with 8 said transfers of employees from Olathe to Lawrence.[17]

With respect to labor relations matters, Johnson testified that the terms and conditions of employment set forth in the Olathe collective-bargaining agreement, with the exception of certain provisions, including the grievance and arbitration procedure, are applied on a corporatewide basis, with all employees entitled to regularly scheduled raises and other economic benefits. Further, labor relations policy is established by the corporate director of personnel at Olathe (Rogers Road), and there is one standard employee handbook. In addition, all employees participate in a corporatewide profit-sharing plan and Blue Cross-Blue Shield insurance plans. Seniority is normally accorded on a departmental and plant basis; however, for a recent layoff, recall rights were based upon a companywide seniority list. Also, employees, who permanently transfer to another plant retain their companywide seniority.

Finally, the record establishes, and Richard Johnson admitted, that normal day-to-day supervision is effectuated "at the plant level." Thus, the plant personnel assistant in Lawrence is responsible for all hiring, and the plant supervisory personnel issue all verbal and written reprimands, and they may suspend individuals. While all discharges must be approved by the director of personnel, local supervision is involved in any such decisions and conducts the initial investigations. Also, each plant holds periodic supervisory meetings and evaluates employees on its own (according to Johnson, "There is no centralized employee merit review system in our company"), and leaves of absence, pursuant to corporatewide guidelines, are within the discretion of supervisors at each plant.

B. *Legal Analysis*

The complaint contains, and counsel for the General Counsel argues, two distinct theories supporting the allegation that Respondent's conduct herein was violative of Section 8(a)(1) and (2) of the Act. Initially, citing *International Ladies' Garment Workers' Union, AFL-CIO [Bernhard-Altmann Texas Corp.]* v. *N.L.R.B.*, 366 U.S. 731 (1961), counsel for the General Counsel urges a finding that Respondent violated the aforementioned provision by recognizing and entering into a collective-bargaining agreement with CWA as the exclusive representative for purposes of collective bargaining of the production and maintenance employees, including plant clerical employees, at the Lawrence plant at a time when CWA did not represent an uncoerced majority of said employees. Secondly, it is contended, citing *Midwest Piping and Supply Co., Inc.*, 63 NLRB 1060 (1945), that Respondent violated Section 8(a)(1) and (2) of the Act by extending recognition to CWA at the Lawrence plant at a time when Respondent was aware of "a real question concerning the representation of the employees [there]," "based upon the ongoing Teamsters organizing campaign. Contrary to counsel for the General Counsel and also the contentions of counsel for the Teamsters, counsel for Respondent asserts that accretion exists herein and that such "constitutes . . . an absolute defense . . . where the employer and the incumbent union extend their existing unit relationship to include the accreted unit, regardless of whether the incumbent union represents a majority of the accreted unit *and* regardless of whether an outside union has established a question concerning representation." As to the merits of the two theories of the alleged violation herein, Respondent offered no evidence to dispute—and apparently concedes—that CWA had not established majority status at the Lawrence plant when recognition was accorded to it by Respondent. Regarding the *Midwest Piping* theory, counsel for Respondent argues that the extent of Respondent's knowledge of the Teamsters activities prior to May 9 was rumor and rumor of organizing activity does "not rise to a QCR level."

At the outset, Respondent is quite correct in its argument that accretion would constitute an absolute defense to the 8(a)(1) and (2) allegations herein regardless of which supporting theory. *Meijer, Inc., d/b/a Meijer's Thrifty Acres*, 222 NLRB 18, 19 (1976); *Laconia Shoe Company, Inc.*, 215 NLRB 573 (1974). Accordingly, the central consideration herein concerns whether, in the circumstances of this case, the production and maintenance employees at the Lawrence plant may properly be considered to constitute an accretion to the existing Olathe bargaining unit. "The accretion doctrine ordinarily applies to new employees who have common interests with members of an existing bargaining unit and who would have been included in the certified unit or are covered by a current collective-bargaining agreement." *Renaissance Center Partnership*, 239 NLRB 1247 (1979). In determining whether a particular group of employees constitutes an accretion or a separate bargaining unit, the Board carefully weighs a variety of factors such as integration of operations, centralization of administrative and managerial control, geographic proximity, similarity of working conditions and skills, labor relations control, common or separate supervision, and bargaining history. *Bryan Infants Wear Company*, 235 NLRB 1305 (1978); *Pix Manufacturing Company, Division of Phillips Electronics & Pharmaceutical Industries Corp.*, 181 NLRB 88, 91 (1970). Analysis of these factors and of the entire record establishes that present are some factors militating toward and others against accretion. In such circumstances, a balancing of all factors is required; however, the Board ". . . will not . . . under the guise of accre-

[16] Of these, according to Johnson, 45 percent involved bargaining unit personnel.

[17] At the time the Lawrence plant opened in 1973, 15 Olathe employees transferred there but were required to reapply for positions.

tion, compel a group of employees, who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret election or by some other evidence that they wish to authorize the union to represent them." *Melbet Jewelry Co., Inc., et al.*, 180 NLRB 107, 110 (1969).

Bearing in mind this admonition of the Board, I believe that to find that the Lawrence plant constitutes an accretion to the existing Olathe bargaining unit would emasculate the Section 7 rights of the Lawrence production and maintenance employees and be repugnant to the policies of the Act. Two factors are of critical importance to my conclusion. First, the Lawrence plant commenced operations 2 years before Respondent formally recognized and entered into its initial collective-bargaining agreement with CWA, and since that time said plant has always been excluded from the contract's coverage. The Board has traditionally held that the single, overriding factor in any accretion case is "whether the group sought to be accreted has been in existence at the time of recognition or certification, yet not covered in an ensuing contract, or, having come into existence, has not been part of the larger unit to which their accretion is sought or granted." *Laconia Shoe Company, supra* at 576. If, as herein involved, this question may be answered affirmatively, accretion cannot exist notwithstanding the presence of factors demonstrating the commonality of interests with a larger unit. *Laconia Shoe Company, supra; Sterilon Corporation*, 147 NLRB 219 (1964). Secondly, nothing in the parties' bargaining history demonstrates that there has been an accretion. Rather, said history conclusively shows that the Lawrence plant employees have always been consciously excluded from the recognized Olathe bargaining unit.[18] Thus, during negotiations in 1975, 1976, and 1979, CWA demanded that recognition of its bargaining agency be extended to employees at Respondent's Lawrence, Ottawa, and Paola plants. On each occasion, Respondent refused to accede to CWA's position unless and until the union's majority status was demonstrated at those facilities or the Board ruled that accretion existed, and CWA always acquiesced—accepting and, in effect, agreeing with Respondent's position. The significance of the limited contractual recognition is illustrated by Respondent's 1975 memorandum to the Olathe employees, which emphasized that the Lawrence and Ottawa employees were not included in the unit. Finally, while Respondent's rationale for doing so was uncontroverted, I find it highly significant that recognition as the collective-bargaining representative of the Lawrence production and maintenance employees was granted to CWA despite the fact that Respondent's previously stated conditions precedent to the extension of recognition were not met. In these circumstances, especially noting that Respondent historically opposed the extension of CWA's bargaining agency to the Lawrence plant employees and that CWA always acceded to this position, I conclude that it would be inimical to the purposes and policies of the Act to find that the Lawrence plant employees should now be accreted to the contractual Olathe bargaining unit without an election or other showing of majority support for CWA. *Arco Electronics, Inc., and Precision Film Capacitors, Inc.*, 241 NLRB 256 (1979); *Legal Services for the Elderly Poor*, 236 NLRB 485, 486 (1978); *Amcar Division, ACF Industries, Inc.*, 210 NLRB 605 (1974); *Remington Rand, Division of Sperry Rand Corporation*, 190 NLRB 488, 489 (1971).[19]

Having concluded that the production and maintenance employees at Respondent's Lawrence plant do not constitute an accretion to the Olathe bargaining unit, the law is patently clear that Respondent could only have lawfully recognized CWA at the Lawrence facility if that Union established its majority status by authorization cards or some other means. *International Ladies' Garment Workers' Union, supra*. The record establishes, and Respondent concedes, that when recognition was granted CWA had in no way established its majority status at the Lawrence plant. In fact, the uncontroverted evidence discloses that no CWA organizing activity was even occurring at that location. Accordingly, I find[20] that Respondent violated Section 8(a)(1) and (2) of the Act by recognizing and entering into a collective-bargaining agreement with CWA on May 9 at a time when it had not established—and did not represent—a majority of Respondent's Lawrence plant employees. *Hoover, Inc.*, 240 NLRB 593 (1979); *The Hartz Mountain Corporation*, 228 NLRB 492 (1977).[21]

Remaining for decision is the allegation of the complaint that Supervisor Kuester violated Section 8(a)(1) of the Act during his May 6 conversation with employee Rhonda Miller by interrogating her regarding her union activities and by creating the impression of surveillance of her said activities. Noting her testimonial inconsisten-

[18] I note that the Board reached an opposite conclusion as to the importance of this factor in *St. Regis Paper Company*, 239 NLRB 688 (1978), wherein the Administrative Law Judge found the existence of an accretion and minimized the importance of bargaining history, stating that the failure, in successive contracts, to extend the union's recognition to the facility in question was merely a reflection of poor bargaining. However, I also note that the Administrative Law Judge found that the employer had granted *de facto* recognition to the union at the facility, for the employer had explicitly agreed that three employees there would be covered by all the terms and conditions of the existing agreements. Herein, although Respondent argues that such *de facto* recognition also exists by virtue of the fact that the Lawrence employees enjoy the same contractual benefits as do the Olathe employees, the simple fact is, as admitted by Johnson, that important benefits of contractual coverage, including the grievance and arbitration procedure, were *not* available to the Lawrence employees. Likewise, the Board's decision in *Burroughs Corporation*, 214 NLRB 571 (1974), does not warrant a contrary result. Therein, Respondent had always treated the employees in question as being included in the existing bargaining unit. Such is not the case herein.

[19] Although I believe that a balancing of the accretion factors is not required herein, I note that the substantial evidence of centralized administration and control seems to be of little relevance to a finding of accretion, or lack thereof, as such does not directly affect the employees' day-to-day work performance. Rather, the Board places significant emphasis upon day-to-day supervision at the local level and the authority of the plant supervisors in that regard. The record establishes, and Richard Johnson admitted, that such is effectuated at the plant level. *Meijer, Inc., supra* at 25, fn. 45.

[20] In view of my findings, it is not necessary to rule upon the alternate theory of the complaint—that the recognition of CWA was in contravention of the Board's *Midwest Piping* ruling. Accordingly, I make no findings in that regard.

[21] A violation of Sec. 8(a)(1) and (2) of the Act exists herein irrespective of whether or not the Lawrence plant production and maintenance employees constitute a separate appropriate unit. *Laconia Shoe Company, supra* at 576.

cies and overall demeanor, I found Miller to be an unreliable witness. On the other hand, Kuester seemed to be candid and forthright in his testimony. Accordingly, I do not credit Miller's version of the May 6 conversation with Kuester and shall therefore recommend dismissal of paragraph 5 of the complaint.

CONCLUSIONS OF LAW

1. The Respondent, King Radio Corporation, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. CWA and the Teamsters are labor organizations within the meaning of Section 2(5) of the Act.
3. By recognizing and entering into a collective-bargaining agreement with CWA as the collective-bargaining representative of its Lawrence plant production and maintenance employees, including plant clerical employees, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
5. Unless specifically found, Respondent has engaged in no other unfair labor practices.

THE REMEDY

Having found that Respondent as engaged in certain unfair Labor practices, I shall recommend that it cease and desist therefrom and take affirmative action designed to effectuate the purposes and policies of the Act. Having found that Respondent unlawfully extended recognition to and entered into a collective-bargaining agreement with CWA as the bargaining representative of the Lawrence plant production and maintenance employees, including plant clerical employees, I shall recommend that Respondent be ordered to withdraw and withhold all recognition from CWA as the collective-bargaining representative of such employees and cease giving effect to the May 9, 1980, contract extension agreement with respect to them, or to any extension, renewal, or modification thereof, or to any superseding agreement, unless or until CWA is certified by the Board as such representative.[22]

Upon the foregoing findings of fact, conclusions of law, and the entire record, I hereby issue the following recommended:

ORDER[23]

The Respondent, King Radio Corporation, Olathe, Kansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Recognizing and bargaining with Communications Workers of America as the exclusive representative for purposes of collective bargaining of certain of its employees at the Lawrence, Kansas, plant unless and until such labor organization is certified by the Board as the exclusive representative of said employees pursuant to Section 9(c) of the Act.

(b) Enforcing or giving effect to any collective-bargaining agreement with Communications Workers of America, covering its Lawrence plant employees, or any extension, renewal, or modification thereof, or to any superseding agreement; provided, however, nothing in this Order shall authorize or require the withdrawal or elimination of any wage increase or other benefits or terms and conditions of employment which may have been established pursuant to such agreement.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from Communications Workers of America as the exclusive representative for purposes of collective bargaining of its production and maintenance employees, including plant clerical employees, at its Lawrence, Kansas, plant until said labor organization has been duly certified by the Board as the exclusive representative of such employees.

(b) Post at its Lawrence, Kansas, plant copies of the attached notice marked "Appendix."[24] Copies of said notice, on forms provided by the Regional Director for Region 17 of the National Labor Relations Board, after being duly signed by a representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges that Respondent violated Section 8(a)(1) of the Act by interrogating employees as to their union activities and by creating the impression of surveillance of union activities.

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[22] Inasmuch as there is no form of union-security clause in the existing collective-bargaining agreement, no dues-reimbursement remedy is appropriate herein. Moreover, nothing contained herein shall require Respondent to withdraw or revoke any economic or other benefits which may have been granted to the Lawrence plant employees pursuant to Respondent's unlawful recognition of, and collective-bargaining agreement with, CWA.

[23] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections hereto shall be deemed waived for all purposes.

[24] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."